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November 3, 2014

BY CERTIFIED MAIL

Richard E. Kessel, President
MATEP, LLC
474 Brookline Ave
Boston, MA 02215
Certified Mail # 7012 2210 0001 3554 3635

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance
with Federal Clean Water Act's Industrial Stormwater Discharge Requirements:
474 Brookline Avenue, Boston MA

Dear Mr. Kessel:

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act (the "Act") against MATEP, LLC ("MATEP"). The subject of the action will be MATEP's unlawful discharge of stormwater from its steam electric power facility at 474 Brookline Avenue, Boston (the "Facility"). Stormwater runoff from the Facility is discharged into the Muddy River, a tributary to the lower Charles River.

MATEP submitted a Notice of Intent ("NOI") to be covered by EPA's reissued Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the

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“Permit”) on April 15, 2009 and August 22, 2011.¹ Since the company commenced benchmark monitoring in July 2009, MATEP has had a pattern of exceeding EPA benchmark limits for iron. The ongoing nature of these exceedences shows that the company is not taking adequate corrective action. MATEP has also failed to consistently conduct and report quarterly monitoring, perform required inspections, and submit annual reports to EPA, as required by the Permit.

BACKGROUND

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface waters. Stormwater pollution is a significant source of water quality problems for the nation's waters.

Clean Water Action will ask the Court to ensure MATEP’s future compliance with the Act, assess civil penalties in an appropriate amount,² award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action’s complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director
Clean Water Action
262 Washington Street, Suite 301
Boston, MA 02108
(617) 338-8131
(617) 335-6449 (fax)

¹ The Stormwater Permit expired on September 29, 2013, but has been administratively continued by its own terms.

² The statute authorizes the Court to assess a penalty of up to \$37,500 a day for each violation. See 33 U.S.C. § 1319(d) and 78 Fed. Reg. 66647 (Nov. 6, 2013).

Counsel for Clean Water Action in this case is:

Nora J. Chorover
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Boston, MA 02114
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MATEP'S VIOLATIONS AND DATES OF VIOLATIONS

MATEP's violations are described below and are also set forth on a Table attached as Exhibit A hereto.³ The Complaint, when filed, will set forth additional days of violations that occur between the date of this letter and the date on which the Complaint is filed.

1. Failure to Comply with the Permit's Monitoring, Inspection, and Reporting Requirements.

MATEP is required to collect and analyze stormwater for the presence of iron,⁴ and to document these monitoring activities on a quarterly basis.⁵ MATEP failed to comply with these monitoring requirements, as set forth on Exhibit A. In particular, the company failed to monitor and report on the presence of iron in twelve of the twenty monitoring quarters.

MATEP is required to submit benchmark monitoring data to EPA and the Massachusetts Department of Environmental Protection ("Mass DEP") in accordance with the provisions of Section 7 of the Permit. MATEP must submit quarterly benchmark monitoring data to EPA within 30 days following receipt of monitoring results.⁶ MATEP failed to comply with these requirements. See Exhibit A.

³ Clean Water Action believes that violations have occurred on the dates identified in this letter and on Exhibit A, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through October 27, 2014 are set forth on Exhibit B hereto. The complaint, when filed, will set forth additional rain dates since October 27, 2014.

⁴ See Permit Section 8.O.7, pg 105.

⁵ See Permit Section 6.1.

⁶ See Permit, Section 7.1; If the data contains any exceedance of benchmarks, it must also be submitted to Mass DEP. See Permit, Section 9.1.2.4.

MATEP is required to submit an annual report to EPA regarding the findings from its annual comprehensive site inspections and corrective actions that may be required.⁷ MATEP has failed to submit any annual reports to EPA, as set forth in Exhibit A.

To the extent additional reporting violations become known to Clean Water Action before the action is filed, the complaint will seek remedy for such additional reporting violations. To the extent additional reporting violations are learned through discovery in this action, the complaint will be amended to seek remedy for such additional reporting violations.

2. Failure to Implement Adequate Control Measures and Corrective Action.

The Permit requires MATEP to ensure that its control measures minimize its stormwater pollutant discharges. Permit, Section 2.0, pg. 12.⁸ MATEP must modify its control measures as expeditiously as practicable whenever it finds that they “are not achieving their intended effect of minimizing pollutant discharges.” *Id.*, Section 2.1. Corrective action must be taken whenever the results of monitoring show that “an exceedance of the 4 quarter average is mathematically certain.”⁹ Documentation of corrective action must be included in the annual report.¹⁰

As shown in the following table, levels of iron in MATEP’s stormwater discharges have been many magnitudes above the Permit’s benchmark levels since the company began monitoring in July 2009.

⁷ See Permit, Section 7.2, pg. 41.

⁸ “Minimize” means “reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.” *Id.*

⁹ Permit, pg. 19.

¹⁰ *Id.*

TABLE OF MONITORING RESULTS SHOWING BENCHMARK EXCEEDENCES

Values that are bolded and underlined indicate that it is mathematically certain that the rolling annual average for the last four consecutive monitoring quarters will exceed or has exceeded the applicable benchmark.

Quarter	Collection Date	Outfall Name	Iron (1.0 mg/L)
April – June 2014		No Monitoring Data	
Jan – March 2014		No Monitoring Data	
Oct – Dec 2013		Blank DMR Provided to EPA	
July-Sept 2013	9/22/2013	1 3 4	<u>2.00</u> <u>8.80</u> <u>16.00</u>
April-June 2013		No Monitoring Data	
Jan-March 2013		No Monitoring Data	
Oct-Dec 2012		No Monitoring Data	
July-Sep 2012	8/15/2012	1 3 4	<u>4.40</u> <u>1.30</u> <u>6.40</u>
April-June 2012	6/25/2012	1 3 4	<u>13.00</u> <u>1.10</u> <u>29.00</u>
Jan-March 2012	3/28/2012	1 3 4	<u>5.10</u> <u>4.80</u> <u>8.90</u>
Oct-Dec 2011	10/19/2011	1 3	<u>2.80</u> <u>0.72</u>
July-Sep 2011	9/15/2011	1 3	<u>6.90</u> <u>6.60</u>
April - June 2011		No Monitoring Data	
Jan - March 2011		No Monitoring Data	
Oct - Dec 2010		No Monitoring Data	
July - Sept 2010		No Monitoring Data	
April - June 2010		No Monitoring Data	
Jan-March 2010		No Monitoring Data	
Oct-Dec 2009	11/10/2009	1 3 4	<u>5.70</u> <u>2.60</u> <u>12.00</u>
July-Sep 2009	7/7/2009	1 3	<u>0.61</u> <u>2.00</u>

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The presence and persistence of these exceedences show that the company has not complied with the requirement to "modify" its control measures "as expeditiously as practicable" to minimize its pollutant discharges.¹¹ Moreover, since MATEP has not conducted benchmark monitoring for more than a year, it cannot know how its control measures are performing.

This Notice Letter alleges that MATEP failed to implement adequate control measures based on information presently available to Clean Water Action. If additional information regarding this violation becomes known to Clean Water Action in the future, the complaint may set forth some or all of such additional information.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chorover
Attorney for
CLEAN WATER ACTION

¹¹ Moreover, the Permit requires the company to implement corrective action as set forth in Section 3.2 whenever the average of 4 quarterly sample results exceeds an applicable benchmark. To the extent corrective action was taken by the company following the triggering of this event, such corrective action was inadequate, as shown by the fact that benchmark exceedences have persisted.

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11/3/2014
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cc: (by certified mail)

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Gina McCarthy, Administrator
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Eric Holder, Attorney General
U.S. Department of Justice
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MATEP, LLC
1209 Orange St.
Wilmington, DE 19801-0000
Certified Mail # 7012 2210 0001 3554 3697

EXHIBIT A
TABLE OF VIOLATIONS
November 1, 2009 to the Present

<u>Out- fall</u>	<u>Type of Violation</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
1	Failure to Implement Adequate Measures/ Corrective Action	Iron	November 1, 2009	Present
3	Failure to Implement Adequate Measures/ Corrective Action	Iron	November 1, 2009	Present
4	Failure to Implement Adequate Measures/ Corrective Action	Iron	November 1, 2009	Present
n/a	Failure to Conduct Required Comprehensive Site Inspections	n/a	September 29, 2010	Present
n/a	Failure to Conduct Required Comprehensive Site Inspections	n/a	September 29, 2011	Present
n/a	Failure to Conduct Required Comprehensive Site Inspections	n/a	September 29, 2012	Present
n/a	Failure to Conduct Required Comprehensive Site Inspections	n/a	September 29, 2013	Present
n/a	Failure to Submit Annual Reports	n/a	November 13, 2009	Present
n/a	Failure to Submit Annual Reports	n/a	November 13, 2010	Present
n/a	Failure to Submit Annual Reports	n/a	November 13, 2011	Present
n/a	Failure to Submit Annual Reports	n/a	November 13, 2012	Present
n/a	Failure to Submit Annual Reports	n/a	November 13, 2013	Present
1	Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2009	Iron	August 7, 2009	March 30, 2010
3	Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2009	Iron	August 7, 2009	March 30, 2010
4	Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2009	Iron	August 7, 2009	March 30, 2010
1	Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2009	Iron	December 10, 2009	March 20, 2010
3	Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2009	Iron	December 10, 2009	March 20, 2010
4	Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2009	Iron	December 10, 2009	March 20, 2010
1	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2010	Iron	March 31, 2010	Present

<u>Out- fall</u>	<u>Type of Violation</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
3	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2010	Iron	March 31, 2010	Present
4	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2010	Iron	March 31, 2010	Present
1	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2010	Iron	April 30, 2010	Present
3	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2010	Iron	April 30, 2010	Present
4	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2010	Iron	April 30, 2010	Present
1	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2010	Iron	June 30, 2010	Present
3	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2010	Iron	June 30, 2010	Present
4	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2010	Iron	June 30, 2010	Present
1	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2010	Iron	July 31, 2010	Present
3	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2010	Iron	July 31, 2010	Present
4	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2010	Iron	July 31, 2010	Present
1	Failure to Conduct Benchmark Monitoring; July – Sept QTR 2010	Iron	September 30, 2010	Present
3	Failure to Conduct Benchmark Monitoring; July – Sept QTR 2010	Iron	September 30, 2010	Present
4	Failure to Conduct Benchmark Monitoring; July – Sept QTR 2010	Iron	September 30, 2010	Present
1	Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2010	Iron	October 31, 2010	Present
3	Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2010	Iron	October 31, 2010	Present
4	Failure to Report Results of Benchmark Monitoring; July – Sept QTR 2010	Iron	October 31, 2010	Present
1	Failure to Conduct Benchmark Monitoring; Oct – Dec QTR 2010	Iron	December 31, 2010	Present
3	Failure to Conduct Benchmark Monitoring; Oct – Dec QTR 2010	Iron	December 31, 2010	Present
4	Failure to Conduct Benchmark Monitoring; Oct – Dec QTR 2010	Iron	December 31, 2010	Present
1	Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2010	Iron	January 31, 2011	Present
3	Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2010	Iron	January 31, 2011	Present
4	Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2010	Iron	January 31, 2011	Present
1	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2011	Iron	March 31, 2011	Present
3	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2011	Iron	March 31, 2011	Present
4	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2011	Iron	March 31, 2011	Present
1	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2011	Iron	April 30, 2011	Present
3	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2011	Iron	April 30, 2011	Present
4	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2011	Iron	April 30, 2011	Present

<u>Out- fall</u>	<u>Type of Violation</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
1	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2011	Iron	June 30, 2011	Present
3	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2011	Iron	June 30, 2011	Present
4	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2011	Iron	June 30, 2011	Present
1	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2011	Iron	July 31, 2011	Present
3	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2011	Iron	July 31, 2011	Present
4	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2011	Iron	July 31, 2011	Present
1	Failure to Conduct Benchmark Monitoring, Oct – Dec QTR 2012	Iron	December 31, 2012	Present
3	Failure to Conduct Benchmark Monitoring, Oct – Dec QTR 2012	Iron	December 31, 2012	Present
4	Failure to Conduct Benchmark Monitoring, Oct – Dec QTR 2012	Iron	December 31, 2012	Present
1	Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2012	Iron	January 31, 2013	Present
3	Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2012	Iron	January 31, 2013	Present
4	Failure to Report Results of Benchmark Monitoring; Oct – Dec QTR 2012	Iron	January 31, 2013	Present
1	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2013	Iron	March 31, 2013	Present
3	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2013	Iron	March 31, 2013	Present
4	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2013	Iron	March 31, 2013	Present
1	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2013	Iron	April 30, 2013	Present
3	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2013	Iron	April 30, 2013	Present
4	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2013	Iron	April 30, 2013	Present
1	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2013	Iron	June 30, 2013	Present
3	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2013	Iron	June 30, 2013	Present
4	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2013	Iron	June 30, 2013	Present
1	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2013	Iron	July 31, 2013	Present
3	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2013	Iron	July 31, 2013	Present
4	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2013	Iron	July 31, 2013	Present
1	Blank DMR Provided to EPA; Oct – Dec QTR 2013	Iron	October 10, 2013	Present
3	Blank DMR Provided to EPA; Oct – Dec QTR 2013	Iron	October 10, 2013	Present
4	Blank DMR Provided to EPA; Oct – Dec QTR 2013	Iron	October 10, 2013	Present
1	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2014	Iron	March 31, 2014	Present
3	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2014	Iron	March 31, 2014	Present

<u>Out- fall</u>	<u>Type of Violation</u>	<u>Parameter</u>	<u>Beginning Date of Violation</u>	<u>Earliest End Date of Violation</u>
4	Failure to Conduct Benchmark Monitoring; Jan – Mar QTR 2014	Iron	March 31, 2014	Present
1	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2014	Iron	April 30, 2014	Present
3	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2014	Iron	April 30, 2014	Present
4	Failure to Report Results of Benchmark Monitoring; Jan – Mar QTR 2014	Iron	April 30, 2014	Present
1	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2014	Iron	June 30, 2014	Present
3	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2014	Iron	June 30, 2014	Present
4	Failure to Conduct Benchmark Monitoring; Apr – June QTR 2014	Iron	June 30, 2014	Present
1	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2014	Iron	July 31, 2014	Present
3	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2014	Iron	July 31, 2014	Present
4	Failure to Report Results of Benchmark Monitoring; Apr – June QTR 2014	Iron	July 31, 2014	Present

EXHIBIT B

DAYS BETWEEN
NOVEMBER 3, 2009 AND OCTOBER 27, 2014
ON WHICH STORMWATER FROM FACILITY
DISCHARGED TO WATERS OF THE UNITED STATES

November 2009:	14, 15, 20, 24, 27, 28
December 2009:	1, 3, 6, 9, 10, 14, 21, 27, 29
January 2010:	3, 18, 19, 20, 26
February 2010:	11, 17, 24, 25, 26, 28
March 2010:	1, 5, 14, 15, 16, 23, 24, 26, 29, 30, 31
April 2010:	10, 16, 17, 19, 27, 28
May 2010:	8, 15, 19, 20, 30
June 2010:	1, 4, 5, 7, 10, 13, 21, 25, 29
July 2010:	11, 13, 14, 17, 24, 30
August 2010:	6, 10, 16, 23, 24, 25, 26
September 2010:	4, 8, 14, 17, 29
October 2010:	2, 4, 6, 7, 15, 16, 28
November 2010:	5, 6, 8, 9, 10, 17, 26
December 2010:	2, 13, 21, 23, 27
January 2011:	3, 12, 19, 20, 21, 22, 27
February 2011:	2, 3, 5, 6, 8, 25, 26, 27
March 2011:	1, 7, 11, 12, 17, 22
April 2011:	1, 5, 13, 14, 17, 20, 24
May 2011:	5, 8, 11, 15, 16, 17, 18, 19, 20, 24
June 2011:	2, 9, 10, 12, 19, 23, 24, 26, 29
July 2011:	9, 14, 24, 26, 30
August 2011:	3, 7, 8, 9, 10, 15, 16, 20, 22, 26, 28, 29
September 2011:	6, 7, 8, 9, 15, 21, 24, 29, 30
October 2011:	1, 2, 4, 5, 13, 14, 15, 20, 27, 28, 30
November 2011:	11, 17, 18, 23, 24, 30
December 2011:	7, 8, 22, 23, 28
January 2012:	12, 13, 17, 22, 24, 27, 28
February 2012:	25
March 2012:	1, 2, 3, 4
April 2012:	2, 13, 23, 24
May 2012:	1, 2, 5, 9, 10, 15, 16, 23, 30
June 2012:	2, 3, 5, 8, 9, 13, 14, 23, 24, 26
July 2012:	4, 19, 25, 29
August 2012:	1, 2, 6, 11, 16
September 2012:	4, 5, 6, 9, 16, 19, 29
October 2012:	1, 11, 14, 16, 20, 29, 30, 31
November 2012:	8, 14, 28

December 2012:	8, 9, 10, 17, 18, 19, 22, 27, 28, 30
January 2013:	12, 16, 17, 29, 31
February 2013:	10, 12, 17, 20, 24, 25, 27, 28
March 2013:	7, 8, 9, 13, 19, 20
April 2013:	2, 12, 13, 20, 24
May 2013:	9, 10, 20, 22, 24, 25, 26, 29, 30
June 2013:	4, 7, 8, 11, 12, 14, 18, 19, 27, 28
July 2013:	12, 23, 24, 26, 27
August 2013:	10
September 2013:	2, 13, 14, 22
October 2013:	5, 6, 7
November 2013:	8, 18, 23, 27, 28
December 2013:	2, 7, 9, 10, 11, 15, 18, 24, 30
January 2014:	2, 3, 6, 12, 15, 19, 22
February 2014:	4, 5, 6, 14, 16, 19, 20, 21, 22
March 2014:	13, 20, 29, 30, 31
April 2014:	5, 8, 16, 24, 27
May 2014:	1, 10, 11, 17, 23, 28, 31
June 2014:	4, 6, 11, 14, 17, 26
July 2014:	4, 5, 15, 17, 28, 29
August 2014:	13, 14, 22, 31
September 2014:	6, 7, 13, 30
October 2014:	1, 2, 4, 11, 16, 22, 23